

ORDINANCE No. _____, SERIES 2008

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE ISSUANCE OF ITS COLLEGE REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2008A AND SERIES 2008B (BELLARMINE UNIVERSITY PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$43,000,000, THE PROCEEDS OF WHICH SHALL BE LOANED TO BELLARMINE UNIVERSITY INCORPORATED TO FINANCE AND REFINANCE THE COSTS OF THE COMPLETION OF THE CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN APPROXIMATELY 33,350 SQUARE FOOT FACILITY CONSISTING OF CLASSROOMS AND FACULTY OFFICES, THE CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN APPROXIMATE 38,900 SQUARE FOOT RESIDENCE HALL LOCATED AT 2001 NEWBURG ROAD, THE REFUNDING OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT COLLEGE REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2006 (BELLARMINE UNIVERSITY PROJECT), AND TO FINANCE CERTAIN COSTS OF ISSUANCE; AUTHORIZING THE BOND INDENTURES, LOAN AGREEMENTS, BOND PURCHASE AGREEMENTS AND OTHER RELATED DOCUMENTS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS .

Sponsored by: Councilman Jim King

WHEREAS, the Louisville/Jefferson County Metro Government (the "Issuer") is a political subdivision of the Commonwealth of Kentucky (the "Commonwealth") organized and existing under the Constitution and laws of the Commonwealth and as such is authorized under the Industrial Buildings for Cities and Counties Act, Sections 103.200 to 103.285 of the Kentucky Revised Statutes, as amended (the "Act"), to issue its industrial building revenue bonds and lend the proceeds thereof to any person to finance the costs of acquiring, constructing and equipping an "industrial building" (as defined in the Act), including specifically any buildings, structures and facilities, including the site thereof and machinery, equipment, and furnishings suitable for use as health care or related facilities, including without limitation, hospitals, clinics, nursing homes, research facilities, extended or long-term care facilities, including housing for the aged or the infirm and all buildings, structures and facilities deemed necessary or useful in connection therewith, in order to accomplish thereby the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment and encouraging the increase of industry therein, provided that such bonds are payable solely from the loan repayments and other revenues derived in respect of the loan and do not constitute an indebtedness of the Issuer within the meaning of the Constitution and laws of the Commonwealth; and

WHEREAS, Bellarmine University Incorporated (the "Borrower"), a Kentucky nonprofit corporation, applied to the Issuer for the issuance of the Issuer's industrial building revenue bonds pursuant to the Act and the loan of the proceeds thereof to the Borrower to finance (i) the completion of the construction, installation and equipping of an approximate 33,350 square foot building consisting of classrooms and faculty offices, and the construction, installation and equipping of an approximate 38,900 square foot residence hall located at 2001 Newburg Road, Louisville, Kentucky, (the "project"); (ii) the reimbursement to the Company for costs already incurred and paid with respect to the Project; (iii) the refunding of the Louisville/Jefferson County Metro Government College Refunding and Improvement Revenue Bonds, Series 2006 (Bellarmine University Project); and (iv) the payment of certain costs of issuance (including costs of bond insurance premium(s), if any) (the project and the payment of costs of issuance, collectively the "Project"); and

WHEREAS, the total amount of bonds necessary to be issued to finance the Project will not exceed \$43,000,000 in total; and

WHEREAS, the Borrower has requested of the Issuer that the sale of such bonds be made privately upon a negotiated basis to NatCity Investments, Inc. (the "Underwriter"), for underwriting to the public; and

WHEREAS, in order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, the Issuer considers it necessary and proper to [1] authorize the issuance of its Industrial Building Revenue Bonds, in one or more series each bearing the designation "Series 2008" (Bellarmine University Project) (the "Bonds") and the loan of the proceeds thereof to the Borrower to finance the costs of the Project, [2] authorize the execution and delivery of the Indentures and the Loan Agreements, hereinafter identified, and the sale of the Bonds as hereinafter provided, and [3] take other related action; and

WHEREAS, the Act authorizes the governing body of an issuer to delegate to an official thereof or to establish by ordinance or resolution the method or methods for determining the initial interest rate or rates, final principal amounts, conversion privileges and actual terms and maturities of any bonds issued pursuant to the Act, subject to certain limitations; and

WHEREAS, because of dynamic conditions existing in the market in which the Bonds will be sold it is not feasible to establish the initial interest rate or rates, final principal amounts, conversion privileges and actual terms and maturities of the Bonds upon passage of this ordinance; and

WHEREAS, the Legislative Council (the "Legislative Council") of the Issuer deems it advisable to enact this ordinance and to delegate the authority to an official of the Issuer to approve the initial interest rate or rates, final principal amounts, conversion privileges and actual terms and maturities of the Bonds in accordance with the methods, procedures and guidelines set forth in this ordinance; and

WHEREAS, prior to the adoption of this Ordinance and following published notice, the Legislative Council conducted a public hearing affording an opportunity for members of the public to express their views regarding the Project and the Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

Section 1. Public Purposes. The Legislative Council hereby finds and declares that the issuance of the Bonds and the loan of the proceeds thereof to the Borrower to finance the costs of the Project, as herein provided, will further the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment and encouraging the increase of industry therein.

Section 2. Authorization of the Bonds and the Project. For the purposes set forth in the preamble hereto:

A. The Bonds shall be issued in the aggregate principal amount of not to exceed \$43,000,000, in such forms and denominations, shall be numbered, dated and payable as set forth in the Indenture. The Bonds shall mature as provided in the Indentures, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indentures. This Issuer hereby fixes and establishes the interest rate on the Bonds in the manner and pursuant to the provisions of the Indentures. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and the Clerk of the Issuer. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time. The form of the Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indentures, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indentures, shall represent the approved form of Bonds of the Issuer.

B. The Issuer hereby approves the loan of the proceeds of the Bonds to the Borrower to finance the costs of the Project, as provided in the Loan Agreements hereinafter identified.

C. The issuance of bonds for the Project will provide benefits to the Issuer for multiple reasons, including, but not limited to, the following: (i) will provide educational opportunities, and (ii) will provide employment opportunities to residents of Jefferson County.

D. The Legislative Council, as the "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Internal Revenue Code, hereby approves the issuance of the Bonds in the maximum principal amount of not to exceed \$43,000,000, the proceeds of which will be loaned to the Company and used to finance the Project, as described and defined hereinabove.

Section 3. **Bonds are Not a Debt of the Issuer.** THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, RECEIPTS, AND OTHER RESOURCES PLEDGED UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION, OR A LOAN OF THE CREDIT OF THE ISSUER, THE COMMONWEALTH, OR ANY OTHER MUNICIPALITY, COUNTY, OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE COMMONWEALTH. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE COMMONWEALTH, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED OR COMMITTED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF ANY OF THOSE GOVERNMENTAL ENTITIES WITH RESPECT TO PAYMENT OF THE BONDS.

Section 4. Authorization of Bond Indentures. The Mayor and the Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of the Issuer a Series 2008A Trust Indenture and a Series 2008B Trust Indenture (the "Trust Indentures") between the Issuer and U.S. Bank National Association (the "Trustee") substantially in the form attached hereto as Exhibit A-1 and Exhibit A-2 with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval.

Section 5. Authorization of Loan Agreements. The Mayor and the Metro Council Clerk are hereby authorized and directed to execute, acknowledge, and deliver on behalf of the Issuer loan agreements (the "Series 2008A Loan Agreement" and the "Series 2008B Loan Agreement") between the Issuer and the Borrower, substantially in the form attached hereto as Exhibit B-1 and Exhibit B-2 with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval.

Section 6. Authorization of Bond Purchase Agreements. The Mayor is hereby authorized and directed to execute and deliver on behalf of the Issuer a contract of purchase (the "Series 2008A Bond Purchase Agreement" and the "Series 2008B Bond Purchase Agreement") between the Issuer and the Underwriter, in substantially the form attached hereto as Exhibit C-1 and Exhibit C-2 with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval, providing for the sale of the Bonds upon a negotiated basis at a price and on other terms approved by the Borrower and the Underwriter as may be referred to in the Bond Purchase Agreements. It is hereby determined that the price for and the terms of the Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the Issuer and consistent with all legal requirements.

Section 7. Further Acts and Deeds. The Mayor, Metro Council Clerk and other appropriate officers, employees or agents of the Issuer are hereby authorized and directed to execute, acknowledge and deliver on behalf of the Issuer any and all papers, instruments, certificates, affidavits and other documents, including any agreements relating to arbitrage, arbitrage rebate and continuing disclosure deemed necessary by bond counsel, and to do and cause to be done any and all acts and things necessary or proper for entering into and effecting this Ordinance, the Bond Purchase Agreements, the Bond Indentures, the Loan Agreements, the

Tax Agreement and the Bonds, provided that neither the Issuer nor any of its commissioners, officers, employees or agents incur any liability thereby.

Section 8. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Bond, or in the Indentures, Loan Agreements, the Tax Agreement or the Bond Purchase Agreements, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Indentures, Loan Agreements, the Tax Agreement and the Bond Purchase Agreements and the issuance of the Bonds.

Section 9. Open Meetings Law. This Issuer hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Issuer, and that all deliberations of this Issuer and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 10. Severability. The provisions of this ordinance are severable, and if any section, phrase or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this ordinance.

Section 11. Prior Conflicting Actions Superseded. To the extent that any ordinance, resolution, order or part thereof is in conflict with the provisions of this Ordinance, the provisions of this ordinance shall prevail and be given effect.

Section 12. Effective Date. This Ordinance shall be in full force and effect from and after its enactment and publication as provided by law.

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This Ordinance was given first reading at a duly convened meeting of the Legislative Council of the Louisville/Jefferson County Metro Government, held on the _____ day of _____, 2008, and given second reading approval and enacted at a duly convened meeting of the Legislative Council held on the _____ day of _____, 2008.

Jerry Abramson
Mayor

Jim King
President of the Council

Date

Approved:

Kathleen J. Herron, Clerk

Date

APPROVED AS TO FORM AND LEGALITY

Irv Maze
Jefferson County Attorney

By: James T. Carey
Assistant County Attorney

CERTIFICATE OF THE CLERK

I, Kathleen J. Herron, Metro Council Clerk, hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, that the foregoing Ordinance is a true copy of said Ordinance duly enacted by the Metro Council of said Metro Government, signed by the Mayor and President of the Council of said Metro Government, and attested under seal by me as Metro Council Clerk of the Metro Government, at a properly convened term and session of said Metro Council held on _____, 2008 as shown by the official records in my custody and under my control; that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the Metro Government.

IN WITNESS WHEREOF, I have hereunder set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this ____ day of _____, 2008.

Kathleen J. Herron, Clerk

[SEAL]

EXHIBIT A-1

SERIES 2008A BOND TRUST INDENTURE

EXHIBIT A-2

SERIES 2008B BOND TRUST INDENTURE

EXHIBIT B-1

SERIES 2008A LOAN AGREEMENT

EXHIBIT B-2

SERIES 2008B LOAN AGREEMENT

EXHIBIT C-1

SERIES 2008A BOND PURCHASE AGREEMENT

EXHIBIT C-2

SERIES 2008B BOND PURCHASE AGREEMENT